



U.S. Customs and
Border Protection

OT: RR: FAPL
CBP-AP-2020-048180 MAS

April 29, 2020

Ting Yu Yen
13302 Presidio Place
Tustin, CA 92782

RE: Freedom of Information Act Appeal; Ting Yu Yen; a.k.a. Ting Yen, TingYu Yen;
File: CBP-2020-028227

Dear Mr. Yen:

This is in response to your April 12, 2020 request to the U.S. Customs and Border Protection (CBP), Freedom of Information Act (FOIA) Appeals, Policy & Litigation Branch, in which you seek reconsideration of the CBP FOIA Division's partial records release determination, issued April 12, 2020.

In your original FOIA request, submitted January 22, 2020, you stated: "I will[sic] like to obtain my travel history[,] including the dates of entry and exit date from 2000 to 2020. And I will [sic] also like to obtain the document indicating the type of visa I entered with in 2014 and 2015. Thank you." The FOIA Division responded with a one (1) page table which identified border crossing dates and locations for "Ting Yu Yen" – as well as "Ting Yen" and "TingYu Yen" – from June 2003 to March 2020.

Your appeal submission acknowledged receipt of the FOIA Division record log and reiterated your request for “the type of visa that I entered with for the entry dates.” Insofar as you have requested further information about the type of visas, and considering your initial request specified visa information for 2014 through 2015, we are interpreting your appeal submission to limit your request to records from 2014 to 2015. Accordingly, your appeal request is hereby granted.

To ensure that you receive all of the records that CBP maintains about your client, an attorney on my staff has conducted a *de novo* search of the ENFORCE and TECS systems of records. ENFORCE is a system of records that maintains information useful in identifying, investigating, apprehending and/or removing aliens entering or present in the United States, as well as facilitating the legal entry and egress of individuals.¹ Our ENFORCE searches included your first and last names, and variations thereof, with and without your date of birth. Searches based on your passport number and Alien File number were also conducted. Unfortunately, no responsive records were identified.

As noted above, searches were also performed in TECS, an overarching law enforcement information collection, analysis, and sharing environment that securely links telecommunications devices and personal computers to a central system and database.² This environment is comprised of several modules designed to collect, maintain, and screen data as well as conduct analysis, screening, and information sharing. TECS databases contain temporary and permanent enforcement, inspection and intelligence records relevant to the law enforcement mission of CBP and numerous other federal agencies that it supports. TECS investigative and law enforcement information can pertain to individuals, businesses, conveyances, and the importation and exportation of merchandise. TECS also includes border crossing information on travelers entering and departing the United States.

As with ENFORCE, this TECS search included your first and last names, and approximations thereof, both with and without your date of birth. We also performed searches based on your passport number and Alien File number. Within the twenty year period that you identified, our TECS review identified nineteen (19) relevant entries, two (2) of which occurred between 2014 and 2015, and fifty-one (51) encounters, five (5) of which occurred during the 2014-2015 timeframe. Accordingly, we are releasing the following records to you: a four (4) page Person Encounter List for encounters with you between 2000 to 2020; five (5) Person Encounter Detail records for encounters between 2014-2015; a one (1) page I-94 Result List, and two (2) I-94 Document Detail records.

The Person Encounter Detail records provided to you are all one (1) page in length and are for the following dates: February 11, 2015 (on board); February 11, 2015 (not on board); August 9, 2015; August 30, 2014, and June 21, 2014. The I-94 Document Detail records, also each one (1) page, are for arrivals on February 11, 2015 and June 21, 2014.

¹ Immigration and Enforcement Operational Records System (ENFORCE), DHS/ICE-011, 75 Fed. Reg. 23274 (May 3, 2010).

² TECS is the updated and modified version of the former Treasury Enforcement Communications System. *See* 73 Fed. Reg. 77778 (December 19, 2008).

We are releasing the aforementioned nine (9) records, totaling eleven (11) pages, to you with partial redactions pursuant to Exemptions (b)(6), (b)(7)(C) and (b)(7)(E) of 5 U.S.C. § 552. Invoking Exemption (b)(6) permits the government to withhold information about an individual in “personnel and medical and similar files” when the disclosure “would constitute a clearly unwarranted invasion of personal privacy.”³ Information subject to exemption pursuant to (b)(6) must fall within the category of “personnel, medical files and similar files.”⁴ Once that threshold is met, to determine whether the information in question should be disclosed to the public, Exemption (b)(6) requires a balancing test of the public’s right to know the personal information against an individual’s right to privacy.⁵

Concerning the first prong of the test, the “category of record” prong, personnel and medical files are easily identified, but what constitutes a “similar file” requires further analysis. In *United States Department of State v. Washington Post Co.*, the United States Supreme Court determined, based upon a review of the legislative history of the FOIA that Congress intended the term “similar files” to be interpreted broadly, rather than narrowly.⁶ The Court noted that the protection of an individual's privacy “surely was not intended to turn upon the label of the file which contains the damaging information.”⁷ Rather, the Court made clear that all information that “applies to a particular individual” meets the threshold requirement for Exemption 6 protection.

In this instance, the records at issue concern personal privacy because the information being withheld includes CBP officers’ first and last names and badge numbers. Badge numbers are unique identifiers to a particular CBP officer and therefore constitute personally identifiable information relevant to the law enforcement mission of CBP. As such, the first prong of the Exemption 6 test is met as the subject records contain personally identifiable information and are the type of records that falls within the broad definition of “similar files.”

Once the “category of record” threshold has been met, we must next examine whether disclosure of the identified information in the record at issue would constitute a clearly unwarranted invasion of personal privacy. Determining whether there would be a clearly unwarranted invasion of personal privacy requires a balancing of the privacy interest that would be compromised by disclosure against any public interest in the requested information.

³ 5 U.S.C. §552(b)(6).

⁴ *U.S. Dep’t of Justice v. Reporters Committee for Freedom of the Press*, 489 U.S. 749 (1989).

⁵ *Dep’t of the Air Force v. Rose*, 425 U.S. 352 (1976).

⁶ *Dep’t of State v. Wash. Po. Co.*, 456 U.S. 595, 599-603 (1982) (citing H.R. Rep. No. 89-1497, at 11 (1966); S. Rep. No. 89-813, at 9 (1965); S. Rep. No. 88-1219, at 14 (1964)).

⁷ *Id.* at 601 (citing H.R. Rep. No. 89-1497, at 11 (1966)); see *Judicial Watch, Inc. v. FDA*, 449 F.3d 141, 152 (D.C. Cir. 2006) (“The Supreme Court has read Exemption 6 broadly, concluding the propriety of an agency's decision to withhold information does not ‘turn upon the label of the file which contains the damaging information.’” (quoting *Wash. Post*, 456 U.S. at 601)).

The requestor bears the burden of establishing that disclosure would serve the public interest.⁸ Personal information at issue here are first and last names. You have not demonstrated any genuine and significant interest in CBP personnel's aforementioned personally identifiable information, nor have you articulated how the disclosure of this information would advance the primary goal of the FOIA (i.e., to shed light on the operation of the federal government). As such, we are invoking the (b)(6) exemption for this type of information in the records that we are releasing to you.

Exemption (b)(7)(C) exempts from disclosure "records and information compiled for law enforcement purposes" the disclosure of which "could reasonably be expected to constitute an unwarranted invasion of personal privacy."⁹ As background, Exemption (b)(7) is subdivided into six subparts, (A) through (F). The initial requirement for the use of all the (b)(7) exemptions is that the records or information subject to disclosure consideration have been "compiled for law enforcement purposes."¹⁰ Additionally, the (b)(7) exemptions apply to civil, criminal and administrative law enforcement proceedings.¹¹

This exemption protects, among other information, the identity of law enforcement personnel and third parties referenced in files compiled for law enforcement purposes. It is designed to protect law enforcement personnel conducting their official duties from harassment and annoyance in their private lives that could conceivably result from public disclosure of their identity.¹² Exemption (b)(7)(C) is also intended to protect third parties whose identities are revealed in law enforcement files from comment, speculation and stigmatizing connotation associated with being identified in a law enforcement record.

The application of Exemption (b)(7)(C) to specific information requires the user to perform a balancing test regarding an individual's privacy interest against the public interest in CBP employees' personally identifiable information.¹³ The privacy interests of CBP personnel (being protected from public disclosure of the identity of a law enforcement officer who, because of the conduct of his/her official duties, could conceivably be subject to harassment and annoyance in his/her private life) far outweigh whatever public interest, if any, exists in having CBP employees' information released. Here, Exemption (b)(7)(C) is applied to withhold CBP Officers' first and last names and badge numbers in the records that we are releasing to you.

Under Exemption (b)(7)(E), elements of a record may be redacted to protect methods for categorizing, identifying, and navigating law enforcement information. Exemption (b)(7)(E) exempts from disclosure information that would disclose techniques and procedures of law

⁸*Associated Press v. DOD*, 549 F.3d 62, 66 (2d Cir. 2008) ("The requesting party bears the burden of establishing that disclosure of personally identifiable information would serve a public interest cognizable under FOIA").

⁹ 5 U.S.C. 552 (b)(7)(C).

¹⁰ 5 U.S.C. 552 (b)(7).

¹¹ See generally *Center for National Policy Review v. Weinberger*, 502 F.2d 370 (D.C. Cir. 1974); *Detroit Free Press, Inc. v. Department of Justice*, 73 F.3d 93 (6th Cir. 1996); *Ortiz v. Health and Human Services*, 70 F.3d 729 (2d Cir. 1995).

¹² *Nix v. United States*, 572 F.2d 998, 1006 (4th Cir. 1978).

¹³ See *Castenada v. United States*, 757 F.2d 1010, 1012 (9th Cir. 1985).

enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law.¹⁴ Where the agency has a clear law enforcement mandate it only need establish a rational nexus between enforcement of a federal law and the information withheld based on a (b)(7) exemption.¹⁵

In this case, Exemption (b)(7)(E) is applied as the basis to redact the “Primary Query Result,” which represents information that would reveal CBP procedures for screening and inspecting international travelers (i.e., examination and inspection procedures, names of specific law enforcement databases used, procedures related to external/internal coordination/reporting, information which would reveal the scope and focus of certain law enforcement techniques, particular types of secondary inspection, clearance or authorization procedures, names of specific equipment or capabilities used, and instructions on how to process certain information). Release of this information would reveal CBP targeting and inspection techniques used in processing international travelers. Such a release would enable potential violators to design strategies to circumvent the examination procedures developed and employed by CBP in its mission to secure the border and enforce immigration laws by allowing potential violators to better prepare themselves to evade and exploit U.S. immigration and other laws.

Exemption (b)(7)(E) may also be used to redact computer database names, as well as computer identification and navigation codes and CBP internal case numbers. Internal case numbers are properly subject to redaction pursuant to (b)(7)(E) because these records were compiled for law enforcement purposes, the information redacted is related to federal government law enforcement activities (the processing of travelers seeking to enter the United States), and there is a sufficient nexus between the action taken and the governmental mission to which it is related (the processing applicants for entry into the United States).

In the event that you are dissatisfied with the disposition of your appeal, you may obtain judicial review of this decision pursuant to the provisions of 5 U.S.C. §552(a)(4)(B) in the United States District Court in the District in which you reside, in the District where the agency records are situated, or in the United States District Court for the District of Columbia.

¹⁴ See *Fisher v. U.S. Dep’t of Justice*, 772 F. Supp. 7 (D.D.C. 1991) (explicitly recognizing categorical protection for law enforcement techniques and procedures), *aff’d* 968 F.2d 92 (1992); and *Hammes v. U.S. Customs Serv.*, 1994 WL 693717 (S.D.N.Y. 1994) (protecting criteria used to determine which passengers to stop and examine).

¹⁵ See *Costal Delivery Corp. v. U.S. Customs Serv.*, 272 F. Supp.2d 958, 963 (C.D.Cal. 2003) (Customs has a clear law enforcement mandate; Exemption (b)(7)(E) used to withhold techniques or guidelines for law enforcement investigations); *Pons v. U.S. Customs Serv.*, 1998 U.S. Dist. LEXIS 6084 (D.C.C. 1998) (protecting cooperative arrangements between Customs and other law enforcement agencies to keep them effective); and, *Judicial watch, Inc. v. FBI*, 2001 U.S. Dist. LEXIS 25732 (D.D.C. 2001)(protecting the “identities of two types of [FBI] records concerning prison inmates, ”the release of which would enable inmates “to alter their activities[,] thus hindering the effectiveness of the technique”).

As part of the 2007 FOIA amendments, the Office of Government Information Services (OGIS) was created to offer mediation services to resolve disputes between FOIA requesters and Federal agencies as a non-exclusive alternative to litigation. Using OGIS services does not affect your right to pursue litigation. If you are requesting access to your own records (which is considered a Privacy Act request), you should know that OGIS does not have the authority to handle requests made under the Privacy Act of 1974. If you wish to contact OGIS, you may email them at ogis@nara.gov or call 1-877-684-6448.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Shari Suzuki', is positioned above the typed name.

Shari Suzuki, Chief
FOIA Appeals, Policy, and Litigation
Regulations and Rulings
Office of Trade

Enclosures